IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

CRP.No. 1553 of 1997(E)

AA.144/1989 of APPELLATE AUTHORITY (LAND REFORMS), KANNUR

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REVN. PETITIONER: RESPONDENT NO.1

THAYAKAT MANAYIL EDAMANA MADATHIL
SREEDHARANKUTTY THAMPAN, REPRESENTED BY
MUKTHIAR AGENT, THAYAKAT MANAYIL NARAYANAN
THIRUMUMPU.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS/APPELLANT/RESPONDENT 2:

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1. SAMANTHAN PUTHIYADATHIL KUNHIRAMAN NAYANAR
   PERINGOME AMSOM, DESOM, P.O.PARAKUNNU (DIED AND LR'S IMPLEADED)

2. EXECUTIVE OFFICER, MUTHUKAT KAVU DEVASWAM
   P.O.ERAMAM.

3. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY
   TO GOVERNMENT, TRIVANDRUM.

RESPONDENTS 4 TO 9 ARE IMPLEADED AS ADDL. RESPONDENTS 4 TO 9
AS PER I.A.NO.3317/2006

4. MRS.P.REMANI, AYANOOR, POST KAMBALLOOR,
   VIA. CHERUPUZHA, KASARAGOD DIST.

5. MRS.P.THANKAMANI, W/O.A.V.KARUNAKARAN
   AUHAN VEETTIL, POST PILICODE, VIA. TRIKARPUR
   KASARAGOD DISTRICT.

6. P.SHIRDIDAS, PERINTHATTA,
   P.O.PORAKKUNNU
   VIA. M.M.BAZAR, KANNUR DISTRICT.

7. P.SAIDAS, PERINTHATTA,
   P.O.PORAKKUNNU, VIA. PAYYANNUR
   KANNUR DISTRICT.

8. SAISATHI.P.
W/O.A.V.KUNHIRAMAN
MAJESTY, MANGOD
P.O.BEEMANADI, VIA. NILESWAR-671314.

9. P.SAHITHA, W/O.P.K.LAKSHMANAN
KOOTAPANA, P.O.ETTUKUDUKKA
VIA. KARIVELLUR, KANNUR DIST.

BY GOVERNMENT PLEADER
SRI.S.SREEKUMAR
SRI.S.SREEKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/12/2007, ALONG WITH CRP NO.1674 OF 1997, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.1553/1997

&

C.R.P.No.1674/1997

Dated this the 17th day of December, 2007

O R D E R

These civil revision petitions arise out of two Original Applications under Section 72B of the Kerala Land Reforms Act. They are O.A.Nos.2579 of 1976 and 23031 of 1975. The first original application was filed by Kunhiraman Nayanar as O.A.No. 23031 of 1975 claiming tenancy right in respect of 9 acres of land in resurvey No.32 and 33 of Peringom Village. In that application, the revision petitioner Sreedharankutty Thampan was not a party and the only respondent was Muthukat Kavu Devaswom (hereinafter referred to as the 'Devaswom'). Sreedharankutty Thampan filed an application to implead him as an additional respondent. That application was dismissed by the Land Tribunal which was challenged in appeal filed by him. The appellate authority allowed the appeal and directed Sreedharankutty Thampan to be impleaded as additional second

respondent in O.A. No.23031 of 1975.

2. O.A.No.2579 of 1976 was filed by Sreedharankutty Thampan under Section 72B for assignment of an extent of 14 acres in survey No.32 and 33 of Peringom Village. The only respondent in that O.A. was the Devaswom.

3. The Land Tribunal considered both the applications and passed a common order dated 10th November 1988 whereby the claim of tenancy by Kunhiraman Nayanar was rejected and the claim of tenancy by Sreedharankutty Thampan was accepted.

4. Challenging the common order passed by the Land Tribunal, Kunhiraman Nayanar filed AA Nos.143 of 1989 and 144 of 1989 before the Appellate Authority. By a common judgment dated 31st March 1997, the Appellate Authority allowed the appeals and set aside the order passed by the Land Tribunal. The appellate authority held that the claim of tenancy put forward by Kunhiraman Nayanar is established and therefore allowed O.A.No.23031 of 1975. As regards the claim of tenancy by Sreedharankutty Thampan, the Appellate Authority held that he has failed to establish the tenancy. Accordingly, O.A.No.2579 of 1976 was dismissed.

5. The tenancy put forward by the rival claimants is as follows: There is no dispute that the property belonged in jenmom to Muthukat Kavu Devaswom. According to Kunhiraman Nayanar, the applicant in O.A.No.23031 of 1975, the property was outstanding on oral lease from the Devaswom in favour of one Koran. Koran executed an unregistered assignment deed dated 29.3.1949 (Ext.A1) in favour of Kunhiraman Nayanar and the assignee is in possession and enjoyment of the property. On the other hand, according to Sreedharankutty Thampan, there was a lease in favour of Govindan Adiyodi on 14.11.1929. In the tharavad partition in Adiyodi's tharavad on 13.11.1943 (Exhibit B13), schedule I properties were allotted to Kunhiraman Adiyodi, the extent of property being 112.67 acres. As per Ext.B13 assignment deed dated 24.11.1954, Sreedharankutty Thampan and 5 others got assignment of the property claimed in O.A.No.2579 of 1976.

6. The Appellate Authority held that the claim put forward by Kunhiraman Nayanar is very simple in the sense that there was only oral lease followed by an unregistered assignment deed. The Appellate Authority again found out an

easy method to decide the dispute, i.e., Devaswom agreed that Koran was the tenant under the Devaswom and therefore Kunhiraman Nayanar is entitled to assignment of the land. At the same time, the Appellate Authority held that Ext.A1 unregistered assignment deed is a concocted document. Merely based on certain rent receipts issued by the Devaswom, the genuineness of which was in dispute, the Appellate Authority came to the conclusion that Kunhiraman Nayanar is the cultivating tenant in respect of the property. I am of the view that the Appellate Authority has not discharged its functions as an appellate forum under Section 102 of the Kerala Land Reforms Act. The Appellate Authority under the Act is the final fact finding authority. It has to consider the pleadings and the documentary and oral evidence in the case. In so far as the claim made by Kunhiraman Nayanar is concerned, the Appellate Authority committed a serious mistake in not properly considering the claim put forward by him. The Appellate Authority proceeded only on the stand taken by the Devaswom that Nayanar is the cultivating tenant.

7. In spite of overwhelming registered documentary

evidence, while considering the claim of Sreedharankutty Thampan, the Appellate Authority held that Sreedharankutty Thampan failed to prove the tenancy. Another reason stated by the Appellate Authority is that there is no evidence to show that the documents produced by him pertains to the petition schedule property. It was further held by the Appellate Authority that there is no clear evidence to show that the petition schedule property was outstanding on tenancy with Sreedharankutty Thampan at any point of time prior to 1.4.1964 . Here also, the Appellate Authority rejected the claim made by Sreedharankutty Thampan and others in respect of 14 acres of land only on the ground that they failed to prove possession on or before 1.4.1964. Registered documents like Ext.B1 partition deed of 1943 and Ext.B13 registered assignment deed dated 24.11.1954 were practically ignored by the Appellate Authority in this context. In the light of the oral evidence and other documentary evidence and also considering the rival claim of tenancy by Nayanar, it was not at all proper to arrive at a conclusion on the basis that the tenant failed to prove that he was in possession before 1.4.1964.

8. In short, the Appellate Authority has not properly disposed of the appeals. In **Mohammed Shafi vs. Pallath Mohammed Haji (1987 KLJ 142)** this court has taken the view that in dealing with larger extents of property the land reforms authority has to consider the contentions seriously. It was held thus:

> "I am not at all satisfied with the style and method of the disposal of the appeal by the appellate authority. The appellate authority, constituted under the Kerala Land Reforms Act, should always remember that it has got a very serious responsibility in the matter of disposing the appeals that come up before it under Section 102 of the Kerala Land Reforms Act. They have got the power and the obligation to re-value the evidence and all the circumstances involved in the case and to examine the correctness of the order of the Tribunal. These authorities - the quasi - judicial Tribunals and the appellate authorities constituted under the Kerala Land Reforms Act have got a vital and significant role in the present day administration of justice. They are entrusted with vast and important adjudicatory powers in regard to property rights, which the citizens hold as very dear and precious. The appellate authority as well as the Tribunal are bound to formulate the points in dispute and thereafter to

> consider the circumstances and evidence bearing on those points. They have to discuss the rival contentions. Appellate authority should give its own reasons for accepting or rejecting the findings of the Tribunal. If the Tribunal has not entered findings on relevant issues, the appellate authority has necessarily to record its own findings on vital issues in the case on a proper assessment of the evidence and relevant contentions. I need not say that the appellate authority's function never stops with a review or an overseeing of the Tribunal's order. It is the final fact finding forum. It has to re-appreciate and re-value the circumstances and evidence in the case, since it is exercising an appellate power. Both the land tribunal and appellate authority are bound to give a reasoned decision. Reasoned decisions are not only important for the purpose of showing the citizen that he is receiving justice; they are also a valuable discipline for quasi judicial tribunals themselves. If the appellate authority declines to give a reasoned decision it amounts to a denial of justice and is itself a serious error of law."

9. I am of the view that the Appellate Authority has not properly considered and disposed of the case under Section 102 of the Land Reforms Act. In a revision under Section 103,

normally it is not proper for the revisional court to consider the facts and evidence and arrive at a conclusion on the merits. In the facts and circumstances of the case, I have no other alternative but to set aside the judgment of the Appellate Authority and to remand the matter for fresh consideration by the Appellate Authority. Hence, the judgment of the Appellate Authority is set aside and the matter is remanded for fresh consideration. The Appellate Authority shall dispose of the matter expeditiously, after affording an opportunity of being heard to both the parties.

The revision petition is allowed as above. No order as to costs.

K.T.SANKARAN,
JUDGE

csl